IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.23254 of 2019

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1. Amar Sen Kumar, S/o- Jagdish Prasad Gupta, Resident of Village- Surendra Middle School, Ward No. 9, Azad Nagar, P.S.- Madhepura, District- Madhepura.
2. Bittu Kumar @ Pintu Sah, S/o Vishwanath Sah, Resident of Village- Janki Tola Sahugadh, P.S.- Madhepura, District- Madhepura.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise Prohibition and Registration Department Government of Bihar, Patna.
2. The Collector cum-District Magistrate, Madhepura.
3. The Superintendent of Excise, Madhepura.
4. The Superintendent of Police, Madhepura.
5. The Investigating Officer, Madhepura.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Kamal Kishore Singh, Adv.
For the Respondent/s : Mr. Kumar Manish (SC-5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 02-12-2019 Heard learned counsel for the petitioner and State.

The present writ application has been filed for setting aside the order dated 05.08.2019, passed by the Collector-cum-District Magistrate, Madhepura in Confiscation Case No. 15 of 2019, arising out of Excise Case No. 60 of 2018 in Madhepura P.S. Case No. 296 of 2018, whereby Honda (CB Shine) motorcycle of petitioner no.1, bearing Registration No. BR43F6952 and TVS motorcycle of petitioner no.2 bearing Registration No. BR43L4502 have been confiscated and

Superintendent, Excise, Madhepura has been directed to conduct auction of both the motorcycle.

The factual matrix of the case is that from the motorcycle of petitioner no.1, 1.4 litres of Indian Made Foreign Liquor and from the motorcycle of petitioner no.2, 4 litres of country made illicit liquor were recovered, leading to registration of FIR, being Madhepura P.S. Case No. 296 of 2018, for the offences punishable under Sections 341, 323, 324,333,307, 353, 342 and 506/34 of the IPC and Sections 30(a) and 45 of the Bihar Prohibition and Excise Act, 2016 (hereinafter to referred to as ‘the Act’) against ten named accused persons including petitioner no.2. Subsequently, confiscation proceeding was initiated vide Confiscation Case No. 15 of 2019 and it appears that after hearing the counsels for the parties, vide order dated 15.08.2019, both above mentioned motorcycles have been confiscated and the Superintendent of Excise, Madhepura was directed to conduct auction for sale of both the motorcycles.

Learned counsel for the petitioner submits that the petitioners are the owners of the motorcycles in question and the respondent authorities have illegally seized the motorcycles of the petitioners and confiscated the same.

Considering the fact that in the present case, the confiscation is admitted, there is specific provision under Section 92 under Chapter IX of the Act with regard to appeal being preferred by any aggrieved persons against the order of the Collector before the Excise Commissioner within ninety days.

The Supreme Court in the case of Commissioner of Income Tax and Ors. Vs. Chhabil Dass Agarwal reported in (2014) 1 Supreme Court Cases 603 in the case of assessment order under the Income Tax Act, has held that the discretion under Article 226 of the Constitution of India should not be exercised when alternative efficacious remedy is available. Paragraph nos. 15 and 16 read as follows:

> "15. Thus, while it can be said that this Court has recognized some exceptions to the rule of alternative remedy, i.e., where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice, the proposition laid down in Thansingh Nathmal case, Titagarh Paper Mills case and other similar judgments that the High Court will not

entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. Therefore, when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation.

16. In the instant case, the Act provides complete machinery for the assessment/re-assessment of tax, imposition of penalty and for obtaining relief in respect of any improper orders passed by the Revenue Authorities, and the assessee could not be permitted to abandon that machinery and to invoke the jurisdiction of the High Court under Article 226 of the Constitution when he had adequate remedy open to him by an appeal to the Commissioner of Income Tax (Appeals). The remedy under the statute, however, must be effective and not a mere formality with no substantial relief. In Ram and Shyam Co. vs. State of Haryana, (1985) 3 SCC 267 this Court has noticed that if an appeal is from "Caesar to Caesar's wife" the existence of alternative remedy would be a mirage and an exercise in futility."

In the circumstances, since efficacious alternative remedy is available to the petitioners, we are not inclined to interfere in the matter.

Accordingly, the writ application is disposed of with a liberty to the petitioners to prefer appeal within a period of four weeks before the appellate authority when the appellate authority is expected to decide the appeal expeditiously within a period of ten weeks of its filing, considering the delayed filing sympathetically in view of the fact that the writ application was pending before this Court.

It is made clear that we have not expressed any opinion with regard to the merit of the case.

It is further made clear that if the sale auction with regard to above-mentioned motorcycles of the petitioners has not been done till date, the same will not be done till the appeal of the petitioners, if so filed against the final order, is finally disposed of by the appellate authority.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

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